78-1641

Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-1641

PAUL HENRY PARKER,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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PAUL HENRY PARKER, by and through his undersigned attorneys, petitions for a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit in this case.

OPINION BELOW

The Panel Opinion of the Court of Appeals (App. A, *infra*, is reported at 586 F.2d 422 (5th Cir. 1978).

JURISDICTION

The Panel Opinion of the Court of Appeals was entered on December 18, 1978. The Court of Appeals denied Petitioner's Motion for Rehearing and Reconsideration on February 5, 1979. The jurisdiction of this Court in invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the trial court erred in denying defendant's Motion to dismiss the Indictment herein, said Indictment having been "found" in excess of five (5) years next after the offense had been committed.

2. Whether the trial court erred in handling the *in camera* proceedings relating to a Witness Subpoena Duces Tecum served upon counsel for the key prosecution government witnesses when:

   a) the trial court, during the course of the *in camera* inquiry of said attorney failed to examine the documents that were the subject matter of said subpoena that were contained in counsel's file produced in response to said subpoena.

   b) the trial court relied upon statements and representations of counsel for the government's key prosecution witnesses, who occupied a position adverse to the defendant herein, regarding the existence or non-existence of documents in his file produced in accordance with a Witness Subpoena Duces Tecum served upon him, as opposed to the examination of said documents by the trial court.

   c) Non-privileged communications reflected in the documents that were in the possession of counsel for the key prosecution witnesses that contained material and relevant matter relating to and bearing upon the credibility of the key prosecution witnesses were never provided the defendant, due to the trial court's failure to examine the documents in the possession of counsel during the *in camera* proceedings and the court's reliance upon advice of counsel regarding the tenor and content of the documents produced in response to the defendant's Witness Subpoena Duces Tecum.

3. The trial court erred in admitting in evidence in the government's case *in chief*, through the testimony of the government's key prosecution witnesses, the fact that said witnesses had been previously convicted of the offenses for which the defendant stood charged, all of which occurred prior to any impeachment of either of said key prosecution witnesses.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

a. Fifth Amendment, United States Constitution:

"No person shall . . . be deprived of life, liberty, or property, without due process of law . . ."

b. Sixth Amendment, United States Constitution:

"In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense."

c. Sixth Amendment, United States Constitution:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury . . ."

d. Title 18, United States Code, § 3282:

"Except as otherwise expressly provided by law, no person shall be prosecuted, tried or punished for any offense, not capital, unless the indictment is found . . . within five (5) years next after such offense shall have been committed."

STATEMENT OF CASE

Petitioner, PAUL HENRY PARKER, together with two other individuals, was charged with a three-count Indictment, being Case No. 76-62-Orl.-Cr.-Y, which alleged violations of Title 18; U.S.C., §§ 2, 371, 842, 842(a)(3)(A), 844, 844(i); 26 U.S.C., §§ 5861, 5861(d), 5861(e), and 5871. The defendant, in due course, entered his plea of not guilty; proceeded to trial; and was convicted of all counts by virtue of a jury verdict returned September 25, 1976.

Petitioner filed appropriate pre-trial motions, all of which were denied.

Petitioner was sentenced to serve a term of ten (10) years in prison on Count I, ten (10) years on Count II, and five (5) years on Count III, all to run concurrently.

The defendant filed a timely appeal from the aforesaid convictions and sentences to the United States Court of Appeals for the Fifth Circuit. The defendant's conviction was affirmed by a Panel Opinion dated December 15, 1978. The defendant filed a timely Petition for Rehearing and Reconsideration en Banc, which was denied by Order of the United States Court of Appeals for the Fifth Circuit on February 5, 1979.

These proceedings, in order to be timely, are due to be filed before this Court on March 7, 1979. Petitioner is presently at liberty on bond, which was filed contemporaneous with his arrest after the return of the Indictment herein.

The following abbreviations will be used throughout this Petition: "R" — Record on Appeal
"App." — Appendix to Brief

STATEMENT OF FACTS

The three-count Indictment charged Petitioner and others with several offenses committed against the United States of America. Count I charged that the offense occurred on April 16, 1971; Count II charged that the offense occurred on April 16, 1971; and Count III, the conspiracy count, charged that the offense occurred from on or about February 25, 1971, and continuously thereafter, up to and continuing through April 16, 1971.

The Indictment was returned by the Grand Jury at approximately 7:00 o'clock P.M., April 15, 1976, and in due course thereafter filed with the Clerk of the United States District Court for the Middle District of Florida, at Orlando, Florida. (App. B). Petitioner's trial attorney moved to dismiss the Indictment and contended that the defendant could not be prosecuted, tried or punished for any offense since the Indictment

was not found within five (5) years next after the commission of the offenses charged. The Motion to Dismiss was denied and the matter proceeded to trial. During the course of the trial the government witnesses testified that in the early morning hours at Ocoee, Orange County, Florida, in the Middle District of Florida, on April 16, 1971, they were in possession of destructive devices and caused a building located on the premises of Overland Hauling Co., Ocoee, Florida, to be damaged or destroyed through the use of said destructive devices, after which incident the persons who possessed said destructive devices and caused the destruction of the building were arrested, almost immediately thereafter, by federal law enforcement officials. (App. C). After the government rested its case *in chief*, the defendant moved for a directed verdict of acquittal, which was denied, and at the conclusion of all evidence that motion was renewed and likewise denied.

During the course of the trial of Petitioner, his attorney, together with counsel for a co-defendant who was acquitted in the trial, caused to be issued and served upon Norman Abood, Esq., of Jacksonville, Florida, and Scott Charlton, Esq., of Tampa, Florida, Witness Subpoenas Duces Tecum calling for them to appear as defense witnesses in this cause and produce certain documents in their files relating to their respective representations of the two key prosecution witnesses against Petitioner; specifically the Witness Subpoenas Duces Tecum called for the attorneys to produce their office files, with all correspondence concerning their dealings with Mr. Herman F. Witt and Mr. Charles H. Bullard, the government's key prosecution witnesses against Petitioner, and all correspondence and memoranda relating to any plea negotiations or other dealings by counsel in behalf of these witnesses with law enforcement officials of the United States of America.

Both attorneys asserted the attorney-client privilege and refused to either testify as to their communications with Messrs. Witt and Bullard or communications to the federal law enforcement officials in their behalf, or to divulge their files to anyone absent a court order.

Earlier in the trial of Petitioner, Mr. Witt was called as a government witness and testified generally regarding contacts, dealings and communications with both Mr. Abood and Mr. Charlton, and the actions of those attorneys in his behalf to obtain leniency from the government in connection with sentences that had previously been imposed on Mr. Witt as a result of his earlier conviction for the offenses for which Petitioner stood charged. Mr. Bullard was likewise called as a government witness in its case *in chief*, and testified in the same manner as Mr. Witt.

At the same time that Mr. Charlton represented both Mr. Witt and Mr. Bullard, in an attempt to obtain immunity for them from further prosecution by the government, in exchange for their testifying, he was prosecuting a million dollar civil lawsuit against Teamster's Local Union No. 385, Petitioner Paul Henry Parker, and Mr. Witt, all of whom were defendants in a civil action brought by Overland Hauling Company.

The trial court upheld the attorney-client privilege asserted by the subpoenaed attorneys and ruled that the attorneys for the defense could inquire only as to the same matters contained in the attorneys' files, as was testified to by Messrs. Witt and Bullard; and the court stated that it would not allow the defense attorneys to inspect their files. After some discussion, the court inquired of counsel as follows:

"THE COURT: Did you want them to reveal to me what is in their files?

MR. RUSS: I would request an *in camera* inspection of their files so as to resolve these questions.

MR. CHARLTON: I was about to suggest — I have no objection to Your Honor inspecting my files or having one of your law clerks, even at your direction, brief the file.

THE COURT: Well, I would have to do it myself on the record on an *in camera* basis, I suppose."

(App. D).

In actuality, however, the court never inspected the files. Rather, during an *in camera* colloquy between counsel and the court, the court let the attorneys themselves relate to the court which material in their files they felt might be relevant. This was in spite of the fact that the attorneys, being witnesses in the case, were subject to the rule of sequestration and had not heard the testimony of Herman F. Witt; and they were therefore not in a position to know what was relevant or what was not relevant. This was pointed out to the judge on several occasions by Mr. Abood:

> "...My files contain letters, documents, motions, and things of that matter, which may or may not be relevant. I don't know what Mr. Witt said on the witness stand yesterday, so, therefore, even if he has published some of these matters, I don't know what they are..."

A careful inspection of the *in camera* transcript reveals that the court did not himself inspect the files, but relied upon the witnesses to bring to the court's attention letters, documents, or other materials that the witnesses themselves deemed relevant.

On page 28 of the *in camera* transcript, the following exchange took place between the court and Mr. Abood:

"THE COURT: Do you have anything else in your file or in your communications between either of these two people that would indicate they were given promises by the Government for their testimony?

MR. ABOOD: Yes, I do."

Later, during the same *in camera* examination, the court inquired:

"THE COURT: But let me ask you this, have you got any

statements by Witt in which Witt admits that Parker knew nothing of the bombs and that Wingate or Burch had nothing to do with the bombing?

MR. ABOOD: From Witt?

THE COURT: Yes.

MR. ABOOD: No, not written statements. I have oral—well, of course, oral statements had to be that way because Witt had nothing to do with it.

The statements that I had of, I have, Your Honor, and this is up to the Court, I guess, the defense lawyers, the statements that I have recently received from Witt is, are the type of statements that say I am going to get Parker for fooling with my wife, and they go on and on, of that nature.

Whether they will be testified to or relevant, I don't know.

THE COURT: Yes.

MR. ABOOD: But I am uncomfortable with having them, and Mr. Russ is insisting I give them to him.

He may or may not use them if he sees them, but they weren't mentioned in the Grand Jury testimony that I looked at.

As I say, I am a witness that can't be in court to know what people are talking about.

THE COURT: Right."

It is apparent that the court did not look at Mr. Abood's file. Furthermore, Mr. Abood had testified that he has in his possession oral statements relevant to the defense that were

never heard by the court. Evidently, they are either in the witness' own knowledge or on tape. Either way, the court did not even inquire as to the nature and extent of this knowledge, or hear or examine such tapes or the transcripts thereof which might exist, that Mr. Abood had advised the court were probably relevant.

The same method of examination was employed by the court in examining Mr. Scott Charlton. It was even more crucial that the court examine Mr. Charlton's file, as there had been an obvious conflict of interest in his representation. Having represented the Overland Hauling Company in a suit against Teamsters Local Union No. 385 and Paul Parker, and having been instrumental in obtaining immunity for the chief witnesses against Parker, Mr. Charlton was then allowed to determine what evidence was, or was not, relevant to Parker's defense. Charlton determined that nothing in his file was relevant.

After the *in camera* examination, the court did not advise counsel for the defense that he had not actually looked over the items in the files nor personally ascertained for himself whether or not such items in the file were relevant. Furthermore, the court did not have any way of knowing if there were other items in the files that might, at a later date, become relevant as a result of testimony by other witnesses.

In addition, the court did not advise defense counsel that Mr. Abood had certain oral statements, tapes, or transcripts of same, that he had never heard. The court only advised counsel that he had inspected the file and was presenting that evidence he thought was relevant, which was in reality only evidence that Mr. Abood and Mr. Charlton thought relevant:

"THE COURT: I have reviewed *in camera* the files of Mr. Abood and Mr. Charlton regarding their representation of Mr. Witt and Mr. Bullard.

I did not swear either lawyer because I felt that as an attorney and officer of the court it was not necessary for me to swear them.

I want the record to reflect that I spent approximately an hour to an hour and a half with Mr. Abood going through his file with him.

We went through it carefully as I could and as he could and there is absolutely nothing in that file that would indicate in any way, shape or form any impropriety on Mr. Abood's part in connection with his representation of either, well, specifically Bullard, or Witt, either of these two people."

(App. E).

The first witness called by the government in this case was Herman F. Witt, and the initial questions asked of Mr. Witt by the government prosecutor, and the answers given, are as follows:

BY MR. HORWITZ, ASSISTANT U.S. ATTORNEY:

"Q Sir, please state your full name and spell your last name for the record.

A My name is Herman Fulton Witt, W-i-t-t.

Q Sir, are you presently in custody?

A I am presently a federal prisoner in the custody of the United States Marshal's Service, Orlando Division.

Q Are you serving any sentence at this time.

A Sir?

Q What sentence are you serving?

A My present sentence is a ten year sentence. 42A2 sentence.

Q Meaning what? Meaning what?

A My understanding that it means that I am eligible for parole any time the Parole Board would see fit to parole me.

Q *Of what charges were you convicted?*

A *I was convicted of multiple charges in participating in some bombings.*

Q And what was your original sentence for that?

A The original sentence was, it was 20 years is the way it ended, the total.

Q The total? There were various counts that total 20 years?

A Yes.

Q Now, have you been granted immunity from further prosecution to testify here today?

A I have, sir.

Q And you recall when it was that you were granted immunity.

A If my recollection serves me correct, sir, it was in the, I believe, the fore part of November of 1975.

Q In addition to being granted immunity, has the Government made any other promises to you to testify here today?

A No, sir, other than my safety, safe protection.

Q Did the Government also agree to advise anyone whom you desired as to the extent of your cooperation?

A Yes, sir." (Emphasis added) (App. F).

Government counsel made an opening statement in this cause, and counsel for defendant reserved his right to make an opening statement until the conclusion of the government's case.

After the presentation of the aforesaid testimony by Mr.

Witt, he then related in detail what he claimed to be his role and Petitioner's role in the bombings that are the subject matter of the Indictment, and which facts constituted the "multiple charges in participating in some bombings" that Mr. Witt testified he had been convicted of.

During the course of the closing argument of government counsel, after the presentation of all evidence, in order to convince the jury that Petitioner was guilty of the bombing charges set out in the Indictment, and in order to enhance the credibility and believability of Mr. Witt, government counsel advised the jury that:

> "You heard from Herman Witt, he told you how he was a convicted felon, *convicted of these bombing incidents.*" (Emphasis added). (App. G)

REASONS FOR GRANTING THE RELIEF

1. Title 18, United States Code, § 3282, in part provides as follows:

> "Except as otherwise expressly provided by law, no person shall be prosecuted, tried or punished for any offense, not capital, unless the indictment is found...within five (5) years next after such offense shall have been committed."

A statute of limitations in a criminal case, unlike the statute of limitations in a civil matter, is not merely a statute of repose, but creates a bar to prosecution. *Chaifetz v. U.S.*, 228 F.2d 133 (C.A.D.C. 1960), *rev'd in part on other grounds*, 81 S.Ct. 1051, 366 U.S. 209, 6 L.Ed.2d 233, *rehearing denied*, 81 S.Ct. 1901, 366 U.S. 955, 6 L.Ed.2d 1247; *Benes v. U.S.*, 276 F.2d 99 (C.A., 6th Cir. 1960). The purpose of Title 18, United States Code, § 3282, is to limit a defendant's exposure to criminal prosecution to certain fixed periods of time following the occurrence of those acts that the Legislature has decided to punish by criminal sanctions. *Toussie v. U.S.*, 99 S.Ct. 858, 397 U.S. 112, 25 L.Ed.2d 156 (1970); *U.S. v. Marion*, 92 S.Ct. 455, 404 U.S. 307, 30 L.Ed.2d 468 (1971).

To the extent that any charged offense occurred, said offense was completed and accomplished in the early morning hours on April 16, 1971, when the government witnesses who testified against Petitioner bombed the premises of Overland Hauling Company and were thereafter arrested. The return of the Indictment in this cause, at 7:00 P.M. on April 15, 1976, was clearly beyond the period of time set forth in Title 18, United States Code, § 3282.

In addition to the fact that the Indictment was returned approximately twelve (12) hours after the statute of limitations had expired, at common law a year consisted of three hundred sixty-five and one-fourth (365-¼th) days. Under the five (5) year statute, the government would be required to bring its indictment within three hundred sixty-five and one-fourth (365-¼th) days, times five (5), or one thousand eight hundred twenty-six and one-fourth (1,826-¼th) days. This allows and permits for one (1) leap year during a five (5) year period of time. In this case, the period of time between the claimed offense and Petitioner's indictment contained one (1) additional day, or a total of one thousand eight hundred twenty-seven (1,827) days elapsed. Under the common law definition, the common law statute of limitations had run before the indictment was returned, irrespective of the time of day that the offense occurred and the time of day that the jury returned the indictment herein.

In light of the passage of in excess of five (5) years from the time and date of the commission of the offenses charged, this Court should consider and dispose of the aforesaid issue in order to eliminate the ambiguity that has now appeared in connection with the interpretation and application of Title 18, United States Code, § 3282, by the district court and appellate court by virtue of the disposition of these proceedings below.

2. During the course of cross-examination of one of the government's key prosecution witnesses, to-wit: the government's first witness, Mr. Witt's former attorneys, appeared before the court in response to witness subpoenas duces tecum

which called for them to produce their office files, correspondence and memoranda concerning their respective dealings with Mr. Witt and another key prosecution witness, Mr. Bullard, and the efforts of said attorneys in behalf of those witnesses to obtain leniency and favorable treatment for those witnesses in regard to the sentences that those witnesses were presently serving and other possible federal criminal prosecution, all of which would materially bear upon the believability and credibility of these government witnesses. The two attorneys refused to produce the materials for defense inspection under a claim of attorney-client privilege, and all counsel joined in a request of the court to make an *in camera* investigation of the attorneys and their files to determine the propriety of the respective claims of privilege. The trial judge made a general inquiry of Scott Charlton, Esq., one of the attorneys who had been subpoenaed, *in camera*, and based upon the statements made to him by Mr. Charlton, without any review of his file, the judge found and determined that there was no evidence contained in his file, either within or without the privilege, that could help the defendants, and accordingly refused to permit the defendants' attorneys to examine or have access to counsel's files. The Opinion of the Fifth Circuit Court of Appeals holds as follows:

> "On appeal, Parker contends that a careful reading of the *in camera* hearing transcript discloses that the district court did not personally examine and inspect the files of the two attorneys, but merely engaged in an *in camera* colloquy, allowing the two attorneys merely to relate the contents of their files. Even accepting this scenario, we cannot conclude that the district judge committed reversible error./6
>
> "We agree with Parker, that a better procedure is possible to avoid placing a defendant in the dilemma of not knowing what documents were produced but not ordered delivered to defense counsel. First, each document produced could have been identified on the record for purpose of review. Second, the district judge could have personally examined and ruled on each document, on the record./7 Absent the custodian's improper withholding of materials, this would preclude the omission of possibly exculpatory material because of simple ignorance of its existence. Finally, the district court could have detailed the methods used in examining the documents and his findings to all counsel. However, that the district court could have done more does not require us to set aside Parker's conviction. The district court here was satisfied with the procedure used. We cannot say that the district court abused its substantial discretion afforded under Fed.R.Crim.P. 17 to oversee the subpoena process...."

Under the provisions of Rule 17, Federal Rules of Criminal Procedure, a defendant has an absolute right to have a witness subpoena duces tecum issued and a witness respond thereto with the documents in question. Sub-section (c) provides that: "The court on motion made promptly may quash or modify the subpoena if compliance would be unreasonable or oppressive." There are no provisions set out in any rule of procedure or statute, except in the Supreme Court Standard No. 509, for an *in camera* proceeding or in the manner in which same is to be conducted. To the extent that it is proper for a court to consider a claim of privilege in response to a subpoena duces tecum and make a determination out of the presence of counsel and the defendant, in order not to breach the claimed privilege, the *in camera* proceedings must not take place in a vacuum, particularly under circumstances where Mr. Charlton not only acted as counsel for Mr. Witt and Mr. Bullard, but Mr. Charlton was counsel for Overland Hauling Company in civil proceedings filed against the Petitioner, the international union of which he was a part, the local union of which he was president, and Mr. Witt, wherein in excess of One Million ($1,000,000.00) Dollars in civil damages was sought for the bombing that is the subject matter of the Indictment. Since, "it is emphatically the province and duty of the judicial department to say what the law is." *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803). The manner and means by virtue of which the court gains and acquires the knowledge to state the law, particularly in a criminal proceeding, is critical. Since we are concerned with an evidentiary privilege, the validity and scope of the privilege is unquestionably a judicial decision, and in order to resolve those issues the court has the power to order an *in camera* examination in order to decide the validity and scope of the privilege as

raised by counsel. *In re Subpoena to Nixon*, 360 F.Supp. 1 (D.D.C.), *aff'd sub nom. Nixon v. Sirica*, 487 F.2d 700 (D.C.Cir. 1973). When the question of privilege was raised before Judge Sirica, he ordered an *in camera* examination of the information itself so he could determine whether disclosure would be contrary to "public interest." A majority of the Court of Appeals for the District of Columbia affirmed the aforesaid ruling by Judge Sirica and held that, "...the courts have repeatedly asserted that the applicability of privilege is in the end for them and not the Executive to decide. They have, moreover, frequently ordered *in camera* inspection of documents for which a privilege was asserted in order to determine the privilege's applicability." *Id.*, at 713-714. This Court, in *United States v. Nixon*, 418 U.S. 706, 94 S.Ct. 3090, 41 L.Ed.2d 1039 (1974), specifically upheld the decision of Judge Sirica and the Court of Appeals, each of which determinations and rulings is absolutely contrary to the actions of the trial court below and the affirmance by the United States Court of Appeals for the Fifth Circuit thereof. The effect of the trial court's determination, as affirmed by the United States Court of Appeals for the Fifth Circuit in the Panel Opinion, was to deny to Petitioner the benefit of significant impeaching and exculpatory material that has come into possession of Petitioner's counsel after the conclusion of the trial below, and only as a result of the production of such matters in a subsequent trial that took place in the United States District Court for the Middle District of Florida, at Orlando, Florida, involving most of the same facts that gave rise to Petitioner's Indictment, but the trial of another individual. (App. H).

The increasing complexities of our society, and particularly the criminal process and proceedings, requires that this Court grant the Petition herein and direct, by virtue of an opinion on the merits, the manner in which trial courts are to proceed in connection with *in camera* proceedings when witnesses seek to avoid appearance before a court or the production of documents on a claim of privilege presented to the trial court by said witness.

3. The Sixth Amendment to the United States Constitution provides, in part, that in all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury. The admission in evidence of the key prosecution witnesses' convictions for the identical offenses of which Petitioner stood accused, violated and infringed upon Petitioner's Sixth Amendment rights to a fair trial from an impartial, and therefore untainted, jury; particularly where the evidence is presented through the testimony of the government's first witness, at the inception of the trial, prior to the time that that witness has been impeached or his credibility attacked. The appellate decisions regarding this subject matter are confusing, contradictory, and lack uniformity and a proper sense and consideration of the defendant's Sixth Amendment rights. The Fifth Circuit Circuit Court of Appeals, contrary to its own decisions in *United States v. Harrell*, 436 F.2d 606 (1970), and *United States v. Fleetwood*, 528 F.2d 528 (5th Cir. 1976), held that it was proper to present before a trial jury the key prosecution witnesses' convictions for the same offenses for which Petitioner stood accused on the justification that:

> "We believe that the government was merely attempting to disclose adverse facts relevant to the witnesses' credibility in anticipation of damaging cross-examination and defense argument. Such a tactic is permissible."

To permit the affirmance of the defendant's conviction to stand, predicated upon the proposition of law as hereinabove set out, will create chaos and confusion in the application of the propositions of law that have stood the test of time, found in 4 A.L.R.3d 709; *Trussell v. United States*, 278 F.2d 478 (6th Cir. 1960); *United States v. Hall*, 178 F.2d 853 (2d Cir. 1950); *United States v. Toner*, 173 F.2d 140 (3d Cir. 1949); *Nigro v. United States*, 117 F.2d 624 (8th Cir. 1941); *Payton v. United States*, 222 F.2d 794 (U.S.App.D.C. 1955); *United States v. Kimbrew*, 380 F.2d 538 (6th Cir. 1967); *Freije v. United States*, 386 F.2d 408 (1st Cir. 1967).

CONCLUSION

As previously set forth in this Petition, Petitioner respectfully submits that the decision and opinion of the Fifth Circuit Court of Appeals in this case raises important questions affecting the administration of criminal law in the United States district and appellate courts, and therefore Petitioner respectfully urges this Court to issue a Writ of Certiorari to the Circuit Court of Appeals for the Fifth Circuit so these issues may be more fully examined through briefs and argument, and receive the benefit of this Court's judgment and final resolution.

/S/

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Attorney for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit has been furnished, by mail, to Wade McCree, Jr., Solicitor General of the United States of America, Department of Justice, Washington, D.C.; and to Edward W. Wadsworth, Clerk of the United States Court of Appeals for the Fifth Circuit, 600 Camp Street, New Orleans, Louisiana 70130, this ~~6th~~ 23rd day of March, 1979.

/S/

ATTORNEY